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5. Animals (§ 84*)—Wanton Killing of Dogs Wrongful.—While an owner of turkeys had a right to kill dogs, if necessary, in defense of his property, he had no right to kill them wantonly, or if his property could be reasonably protected without such killing.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 375.]

6. Animals (§ 84*)—Statute Held Not to Outlaw Dogs So as to Permit Unjustifiable Killing.—Acts 1918. c. 390, § 4, making it the duty of the game warden to kill any dog found injuring or killing domestic animals or fowls, does not affect the qualified property which the owner of the dog has, or extend the right of an owner of fowls to kill dogs in the defense of his property; and it was error to charge that if dogs were injuring or killing domestic fowls belonging to defendant they were outlawed and the owner could have no right therein, and the verdict must be for defendant.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 374.]

7. Appeal and Error (§ 1064 (1)*)—Instruction for Defendant if Dogs Injuring or Killing Turkeys When Killed Held Harmful.—In an action for killing dogs which defendant claimed were chasing his turkeys, an instruction that if the dogs were injuring or killing domestic fowls they were outlawed and plaintiff could have no property right therein, and the verdict must be for defendant, held harmful, as the jury may have ignored applicable doctrines of law contained in other instructions.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

Error to Circuit Court, Lunenburg County.

Action by A. W. Breedlove against Morris Hardy. Judgment for defendant, and plaintiff brings error. Reversed and remanded.

Geo. E. Allen, of Victoria, for plaintiff in error.

Blaine F. Harman and *W. L. Welborn*, both of Roanoke, for defendant in error.

APPALACHIAN POWER CO. *v.* COMMONWEALTH ex rel.
NATIONAL CARBIDE CORPORATION.

Jan. 19, 1922.

[110 S. E. 360.]

1. Public Service Commissions (§ 31*)—On Appeal from Order Fixing Rates Commission Must Certify Facts Found, and Not Merely Evidence.—Under Const. § 156(f), the State Corporation Commission, on an appeal from an order fixing rates, must certify facts found, and not merely the evidence upon which its order is based, as otherwise it is impossible for the appellate court to know what facts or

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

conclusions to give the *prima facie* presumption of correctness, and the certificate of facts should be in such detail, by schedule or otherwise, as to the several items which must be considered by the Commission in reaching its decision, as to show such items separately.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 495.]

2. Constitutional Law (§ 298 (7)*)—Adopting Rate Recommended by Engineer without Regard to Pleadings Held to Amount to a Denial of Due Process of Law.—Action of State Corporation Commission in considering the report of an engineer and in adopting the rate thereby recommended for electric power, without any opportunity given the power company to consider such report, or to present its views on the subject, such report recommending a different kind of rate schedule from that contemplated by the pleadings and the proofs amounted to a denial of a hearing and denial of due process of law.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 209.]

Error to State Corporation Commission.

Proceeding by the Commonwealth of Virginia, on the relation of the National Carbide Corporation, against the Appalachian Power Company to fix electric rates. From an order of the State Corporation Commission, the Power Company brings error. Remanded for further proceedings, appeal to be considered as still pending for certain purposes.

Robert E. Scott, of Richmond, for plaintiff in error.

John S. Draper, Jr., of Pulaski, and *H. T. Hall*, of Roanoke, for defendant in error.

ELMOE v. COMMONWEALTH.

Jan. 19, 1922.

[110 S. E. 257.]

1. Homicide (§ 340 (1)*)—Instruction Concerning the Effect of Accused's Possession of Stolen Property Not Prejudicial.—Where accused and deceased were strangers, and property on deceased's person when killed was found the following day in the possession of accused, who gave a false account of the manner of obtaining possession, an instruction that the exclusive possession of stolen goods was of itself not even *prima facie* evidence of the murder of deceased, but such possession was a most material circumstance, and, where in addition thereto other inculpatory circumstances were proved, such as the refusal to give any account, or the giving of a false account of the possession, such proof would warrant a conviction that there should be some evidence of guilty conduct besides the bare possession of the stolen property, that extrinsic facts and circumstances might constitute such additional evidence, and that it was for the jury under all

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.